THE HON'BLE SRI JUSTICE P.S. NARAYANA
W.P.No.10562 of 2006
&
W.V.M.P.No.1165 of 2006 & W.V.M.P.No.1589 of 2006
In
W.P.M.P.No.13221 of 2006

Date : 26-10-2006

Between:
M/s.Prakash Arts
represented by H.V. Surendranath .. Petitioner

and

The Municipal Corporation of Hyderabad,
represented by its Commissioner
and others .. Respondents

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ORDER:

1. W.V.M.P.No.1165/2006 and W.V.M.P.No.1589 of 2006 are filed by respondents 1 and 2 and respondent No.3 respectively in the Writ Petition to vacate the interim order

granted by this Court on 6-6-2006 in W.P.M.P.No.13221/2006.

2. On 6-6-2006, notice before admission was ordered by this Court while granting interim order for a limited period. Subsequent thereto on 22-6-2006 *rule nisi* was issued and the interim order was extended until further orders.

3. At the request of the Counsel representing the parties in the Writ Petition, the Writ Petition itself is being finally disposed of.

4. The writ petitioner-M/s.Prakash Arts, prayed for issuance of a writ of mandamus declaring the action of respondents 1 and 2 in allowing respondent No3 to raise Uni-Pole in grave yards at (i) Taqia Amanullah Shah grave yard, (ii) Boat Club, Secunderabad, grave yard of Muthawalli Mr.Shaik Ali, (iii) Dargah/Masjid premises adjacent Tank Bund, behind the house of Prakash Arts, with Hero Honda Motor Cycle Advertisement, Tank Bund, Hyderabad and (iv) Grave yard premises adjacent Tank Bund, opposite Ex.DBR Mills as contrary to the resolution and terms and conditions of the license and to pass such other suitable orders.

5. The writ petitioner narrated several factual details in the affidavit filed in support of the Writ Petition. Equally, lengthy counter affidavits are filed by the respondents 1 and 2 and respondent No.3 in the respective vacate applications.

6. Sri T.S.Venkata Ramana, Counsel representing the writ petitioner had taken this Court through Condition No.33 in the proceedings No.270/AD3/Advt/MCH/2006, dated 24-3-2006 of the Additional Commissioner (Advt.), Municipal Corporation of Hyderabad (hereinafter in short referred to as "Corporation" for the purpose of convenience) wherein reference was made to Resolution No.67, dated 28-12-2004 of the Standing Committee of the Corporation and would contend that in the light of the specific prohibition imposed by Condition No.33, no permission shall be granted in a grave yard and in view of the same the impugned action of the respondents 1 and 2 granting such permission in favour of 3rd respondent in the Writ Petition cannot be sustained. The learned Counsel also would submit that even otherwise there is absolutely no application of mind on the part of respondents 1 and 2 while granting such permission while exercising either the power to review, amend, revise or modify the conditions during the contingence of permission as specified under Condition No.40. Hence, viewed from any angle, the impugned action is liable to be set aside.

7. Smt.Jyothi Kiran, the learned Standing Counsel representing the respondents 1 and 2 would maintain that in the light of the correspondence and the request made by A.P. State Wakf Board and keeping in view the interest of the public exchequer the said decision was taken. The learned standing Counsel also would submit that there is no absolute prohibition as such inasmuch as depending upon the circumstances the Commissioner is empowered to review, amend, revise or modify any of the conditions in the light of Condition No.40 and hence in the light of the opinion expressed by the A.P.State Wakf Board the said decision was taken. The learned Standing Counsel also would submit that when a decision

is taken in such administrative matters, reasons in detail need not be recorded, but however while granting permission in favour of 3rd respondent there had been proper application of mind and in view of the same and also in view of the specific stand taken by respondents 1 and 2 in the counter affidavit the impugned action cannot be found fault.

8. Sri Praveen Kunar, the learned Counsel representing the 3rd respondent in the Writ Petition would maintain that the proceedings of the Additional Commissioner (Advt.), of the Corporation dated 29-5-2006 had been enclosed along with the counter affidavit wherein the proceedings relating to the A.P. State Wakf Board also had been referred to. The Counsel also would contend that even as per the own saying of the writ petitioner, the writ petitioner and the 3rd respondent being rival traders in this business, the present Writ Petition is not bona fide one and hence the same is liable to be dismissed.

9. Heard the Counsel and perused the respective pleadings of the parties and also the records produced before this Court.

10. It is stated that by the writ petitioner that in twin cities the writ petitioner Company had raised number of sky signs as well as Uni-Poles, hoardings etc., in different places with the prior permission from respondents 1 and 2 and after obtaining license as well as paying the advertisement tax. It is also stated that the writ petitioner had been taking permission of the site owners and no objection from the neighbours while raising such hoardings and after doing all these formalities only the respondents 1 and 2 had been issuing licenses and permissions to display the advertisements and raising of hoardings. It is also stated that the Corporation first issues license and collects the license fee and subsequently collects advertisement tax under Sections 420 and 421 of the Hyderabad Municipal Corporation Act, 1955 (hereinafter in short referred to as “Act” for the purpose of convenience). It is also the specific stand taken by the writ petitioner that the Standing Committee of the Corporation on 28-12-2004 passed a Resolution, Resolution No.67, wherein the Corporation had formulated 42 terms and conditions with respect to the raising of hoardings, erecting Uni-Poles etc. Several conditions had been referred to in para-4 of the affidavit filed in support of the Writ Petition. Further specific stand was taken that Condition No.33 specifically prohibits the granting of permission of this nature in cases of worship like temples, mosques, churches, grave yards and buildings of national importance including buildings of archeological, historic and heritage importance. It is further stated that the 2nd respondent had granted permission and issued license to the 3rd respondent to raise Uni-Poles in Taqia Amanullah Shah grave yard and as well as other grave yards viz., (i) Boat Club, Secunderabad, grave yard premises of Amanullasha Taquia entrance of residence of Muthawalli, Mr.Shaik Ali, (ii) Dargah/Masjid premises adjacent Tank Bund, behind the house of Prakash Arts with Hero Honda Motor Cycle Advertisement, Tank Bund, Hyderabad and (iii) grave yard premises adjacent Tank Bund, opp. Ex.DBR Mills, contrary to Resolution No.67, dated 28-12-2004. It

is further stated that basing on the said permission, the 3rd respondent already had raised ground work and at any time may erect the Uni-Poles with the help of cranes. Further specific stand was taken that on earlier occasions in the years 2003, 2004 and 2005 similar problems arose and all the residents as well as advertising agents had raised objections before the respondents who in turn withdrew such permissions and had not permitted any such erection of Uni-Poles or hoardings newly in grave yards i.e., after Resolution No.67, dated 28-12-2004 was passed. It is also stated that the petitioner had given complaints from 18-10-2003 till today and also personally met the 2nd respondent and requested that such permission cannot be granted to the 3rd respondent contrary to Resolution No.67 and the terms and conditions of the license. Several other factual details also had been narrated and specific stand was taken that the 3rd respondent will complete raising of the Uni-Pole in the grave yard by 26-5-2006 and if the same is completed the writ petitioner would be put to serious loss.

11. In the counter affidavit filed by the respondents 1 and 2 it is stated that the petitioner is taking permissions after complying with the requirements to obtain license for raising hoardings. The petitioner has to strictly adhere to the norms and conditions for raising and displaying hoardings even after obtaining permission. The petitioner had been taking permissions for display of advertisements and raising of hoardings but certain complaints had been received that the petitioner is unauthorisedly increasing the size of the hoardings considerably and the complaints are presently under investigation and from the field investigation done so far the complaints were proved correct as there were massive violations on the part of the petitioner. It is further stated that the terms and conditions mentioned are more of guidelines in nature and under Condition No.40 the Commissioner reserved the right to review, amend, revise and modify any of the conditions during the contingence of the permission. In fact the petitioner himself had got permissions in places of worship, grave yards etc., and many places and had been doing a lot of business in the Uni-Poles and hoardings erected there and hence the petitioner is not allowed to raise such contention. It is further stated that due to vested interests the petitioner is trying to deliberately confuse the issue by interpreting Dargah as a common graveyard. As it is well know, while grave yard is a common burial ground, Dargah is a place where a saint is buried and it is under Muthavalliship. Thus the said condition has absolutely no application as the permissions in the present case had been granted to the 3rd respondent at Dargah locations. Moreover the petitioner himself had got hoardings/Uni-Poles in Dargahs and in grave yards. It is further stated that the petitioner had been indulging in monopolistic trade practices to abnormally increase his market share in Hyderabad outdoor advertisement business by raising frivolous objections against the permissions being granted to its competitors. As admitted by the petitioner himself he had been preventing the Corporation from granting permissions to other agencies by taking recourse to various obstructive methods. It is also

further stated that the allegations made by the petitioner in paras 10 and 11 of the affidavit filed in support of the writ petition are untrue, untenable, unsustainable and the same are denied. The permissions had been granted to the 3rd respondent after due inspection by the staff and the officers of the Corporation and after satisfaction that no obstruction is caused to the advertisements of the petitioner or any other advertising agency which has hoardings in that area and after following the due procedures for granting permissions to the applicants. It is further stated that the properties mentioned by the writ petitioner are not grave yards but Dargah properties administered by the Wakf Board and the C.E.O. of the State Wakf Board had been requesting the Corporation to grant permission for erection of Uni-Poles at the said locations as they generate income for development and thereby safeguard the Wakf Board properties. It is also further stated that the matter had been examined in detail and after due inspection and satisfaction of fulfillment of the required procedures and after satisfying that the erection of the Uni-Poles do not cause any problem to any section of the society and do not obstruct the existing hoardings, the Corporation had accorded permission purely on the merits of the case as the five Uni-Poles in question would generate substantial income for the Corporation i.e., about Rs.30 lakhs per annum. The Corporation had been losing this potential additional income year after year due to the objections and obstructive tactics of the petitioner and the Corporation needs extra revenue to cater to the increasing civic amenity requirements of the city. It is also further stated that in the present case the permission was granted after due consideration of all the procedures. The petitioner is opposing the grant of permissions with the sole intention of maintaining its monopolistic hold over the Tank Bund area and nothing else. It is also further stated that in fact there are several instances in which the petitioner sought and got permissions for the restricted areas including religious places and grave yards and it is not an ethical and responsible act on the part of the petitioner to raise frivolous objections and block a fair business opportunity for another competing Company and additional revenue to the Corporation. Further the petitioner had been indulging in many unethical business practices of-late and recently had gone to the extent of illegally felling 32 trees (ficus religiosa trees) in Dilsukhnagar area to promote the petitioner's perceived business interests. The Corporation had taken a serious view of this illegal and unpardonable act on the part of the petitioner and an F.I.R. had been lodged and other punitive measures had been initiated and the said act of the petitioner had generated a lot of public outcry and adverse media publicity.

12. The 3rd respondent filed counter affidavit specifically averring that the relief sought for and the challenge made in the Writ Petition is for seeking an omnibus prayer questioning the grant of advertisement rights to the 3rd respondent by respondents 1 and 2 at three different places as mentioned in the prayer. The primary ground in support of the petitioner's contention is the alleged violation of Condition No.33 in the terms and conditions of such a

grant. The petitioner had filed a permission granted to it by the Corporation for Uni-Pole-ad under permission dated 24-3-2006. It is further stated that Condition No.33 has obviously no application to the Dargahs as the said Clause contemplates that the Corporation shall not grant permission at places of worship like temples, mosques, churches, grave yards etc. The petitioner is confusing grave yard with Dargah as both stand on entirely different footing. It is well known that a Dargah is a place where a saint is buried and such places where Dargah is situate are not a common burial ground and are under Muthavalliship. The said Condition No.33 therefore has absolutely no application as the permissions in the present case had been granted in favour of the 3rd respondent at the Dargah. It is also further averred in para-4 that the petitioner had produced a notice of advertisement of the Corporation dated 14-2-2006 which also states that the Corporation is considering renewals of hoardings erected in religious places and grave yards and agencies are requested to submit applications separately to consider case by case for the year 2006-07 and in terms of the same several advertisements had been renewed. It is therefore evident that the conditions on which the petitioner is placing reliance are neither rigid nor inflexible and on the contrary the Corporation considers grant of permission even in the restricted areas on case to case basis. Even assuming therefore that the said Condition No.33 is applicable, the respondents 1 and 2 have statutory powers to relax, amend and review each case on its own merits and impose suitable conditions and as such it cannot be said that there is a total prohibition with respect to such areas as covered under the said Condition No.33. It is also further averred in para-5 that the terms and conditions are general in nature and based upon the broad policy of the Corporation. Condition No.42 which the petitioner had not conveniently brought to the notice of the Hon'ble Court specifically states that the Commissioner has a right to review, amend, revise or modify any of the conditions. It is also a fact that the application of the 3rd respondent for permission to erect advertisements at the places in the precincts of the Dargah were pending from 2003. The petitioner admitted that from 18-10-2003 he had been putting objections against grant in favour of the 3rd respondent and had successfully ensured that the permission was not granted to the 3rd respondent. It is also a fact which the petitioner cannot deny that the petitioner erected many hoardings at Dargah Takya Amanullah Shah grave yard, Tank Bund and the petitioner is now objecting to the permission granted to the 3rd respondent at the same Dargah. The petitioner had suppressed the said fact also in the affidavit filed in support of the Writ Petition. It is also further stated in para-6 of the counter affidavit of the 3rd respondent that if the Corporation undertakes a survey of all the hoardings and advertisements of the petitioner it would be found that almost all the Uni-Pole hoardings of the petitioner are contrary to the terms and conditions on which the petitioner is relying upon for this case. It is also further stated that the allegation that the petitioner he has two Uni-Poles opposite to the grave yard, Tank Bund is factually incorrect as the petitioner is not

having any Uni-Pole at the Tank Bund in the vicinity of Dargah Takya Amanullah Shah. It is further stated that the following advertisements of the petitioner on the face of it violate the same conditions on which he is relying upon :

a) The petitioner had recently erected huge Uni-Pole hoarding adjacent to Begumpet Flyover in Railway property besides Railway lines. The petitioner had also erected huge hoarding in the Railway property besides Railway lines on the Raj Bhavan road.
b) The petitioner had recently erected a huge Uni-Pole hoarding at the building set back area on Raj Bhavan road besides Jaya Gardens.
c) The petitioner had erected a huge Uni-Pole hoarding inside temple premises, Begumpet Flyover and Ameerpet.
d) The petitioner had erected a huge Uni-Pole hoarding besides electrical lines in several places.

It is further stated that the Hon'ble Court may direct the respondents 1 and 2 to verify and conduct an enquiry with respect to the above and take immediate steps for removal of those Uni-Pole hoardings. In para-8 of the counter affidavit it is stated that the application of the 3rd respondent for erection of the hoarding in the precincts of the Dargah was examined by the Corporation authorities and after satisfaction of all the required procedures and after finding merit in the 3rd respondent's application, permission had been granted. On account of the said permission, approximately Rs.30 lakhs of revenue will accrue to the Corporation every year as well as to the Wakf Board and Dargah Muthavalli (caretaker). The 3rd respondent therefore reiterates that the permissions which were granted in favour of the 3rd respondent are not in any of the restricted areas nor are otherwise such as to cause any obstruction or nuisance to anybody or any other advertiser including the writ petitioner. The Writ Petition is therefore totally *mala fide* and is purely an outcome of the business rivalry and one-up-manship. As such the discretion of the Hon'ble Court does not deserve to be invoked in favour of the writ petitioner. It is further stated that upon receiving the necessary permissions from the Corporation the 3rd respondent had invested a very substantial sum of money towards fabrication of five Uni-Poles and because of the Writ Petition filed by the petitioner the 3rd respondent is unable to erect the Uni-Poles and had been suffering huge monetary loss. The exparte interim orders granted by the Hon'ble Court in W.P.M.P.No.13221/2006 dated 6-6-2006 and subsequently extended by the order dated 22-6-2006 be vacated in the circumstances prayed for and it is just and necessary that the Writ Petition be dismissed with costs.

13. These are the respective specific stands taken by respondents 1 and 2 and the 3rd respondent respectively. The proceeding of the Additional Commissioner (Advertisement), Municipal Corporation of Hyderabad No.194/AD3/Advt/MCH/2006 dated 29-5-2006 reads as hereunder :

> "Sub:- MCH – Advertisement Section – M/s.Ad-Age – Provisional permission to erection of (2) Uni-Poles with (4) hoardings of size 60' x 50' each at Dargah Takya Amanullah Shah (Rh), Tankbund, MG Road for the year 2006-2007 – Orders –

Issued – Reg.

Ref:- 1) Resolution No.67, dt.28-12-2004 of the Standing Committee, MCH.

2) No objection Certificate vide F.No.80/N1/Sec'bad/2002 dt.13-12-2002 of the Chief Executive Officer, A.P. State Wakf Board, Hyderabad.

3) Letters dt.6-1-2003 and 5-11-2005 of M/s.Ad-Age Outdoor Advertising.

4) Letter dt.11-5-2006 of M/s.Ad-Age.

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ORDER:

In accordance with the item No.3 of Resolution No.67, dt.28-12-2004 of the Standing Committee, MCH, M/s. Ad-Age Outdoor Advertising is hereby provisionally accorded permission to erect (2) Uni-Poles with (4) hoardings of size 60' x 50' each at Dargah Takya Amanullah Shah (Rh), Tankbund, MG Road based on the NOC vide F.No.80/N1/Sec'bad/2002, dt.13-12-2002 of the Chief Executive Officer, A.P. State Wakf Board, Hyderabad vide reference 2nd cited.

The following Advertisement fees to be paid by the agency for the financial year 2006-2007.

Location	Size		Category	Rate	Advt. Fee	EMD	Total
	Sft.	Sq.mt.	Type				
Dargah Takya Amanullah Shah (Rh), Tankbund, MG Road (2 Uni-Poles)	60'x50' 4 boards	279 x 4 boards	A LIT	600	1,67,400 x 4 boards	5,000 x 4 boards	1,72,400 x 4 boards
			Total :		6,69,600/-	20,000/-	6,89,600/-

Addl.Licence fee for (2) Uni-poles	4,00,000
Grand Total	10,89,600
Amount paid	4,00,000/-
Balance to be paid	6,89,600/-

The permission is issued in pursuant of provisions contained under Section 420 read with Section 622(2) of the HMC Act, 1955 to exhibit/display of advertisement for the financial year 2006-2007, subject to certain terms and conditions as mentioned overleaf."

14. The records are produced before this Court wherein the correspondence between the A.P. State Wakf Board and the Corporation will go to show that on the request of the Wakf Board such permission had been granted. Submissions at length were made by the Counsel representing the respective parties in relation to the said correspondence and also the nature of the order which had been made. It is needless to say that the order dated 29-5-2006 refers to Section 420 r/w. Section 622(2) of the Act. It may be that there may be several other contraventions and it may be that several such permissions would have been granted by the Corporation, but unless and until the legality or illegality of a particular action is questioned before a Court of Law, the Courts may not adjudicate upon such questions. It is not in serious controversy that by virtue of Resolution No.67 dated 28-12-2004 of the Standing Committee of the Corporation, certain terms and conditions in relation to the Uni-Poles, hoardings etc.,

had been specified. The relevant conditions i.e., Condition No.33 and Condition No.40 read as hereunder :

> **Condition No.33:** No permission shall be granted in places of worship like temples, mosque, churches, grave yards & buildings of national importance including buildings of archeological historic and heritage importance.
>
> **Condition No.40:** The Commissioner reserves the right to review, amend, revise or modify any of the conditions during the contingence of permission.

It is no doubt true that Condition No.40 specifies that the Commissioner reserves the right to review, amend, revise or modify any of the conditions during the contingence of the permission. Certain submissions were made relating to the distinction between a Dargah and a Graveyard. It is stated that a Dargah is a place where the body of a saint will be buried whereas a Graveyard would be general term or expression concerned with public at large. Be that as it may, in the light of the facts and circumstances and also the nature of the order made while granting the permission and also in the light of the correspondence which had been produced before this Court, this Court is of the considered opinion that the specific prohibition specified under Condition No.33 would be subject to Condition No.40 wherein the Commissioner had reserved the right to review, amend, revise or modify the conditions during the contingence of a permission. On a careful reading of the impugned order, the 2nd respondent-Additional Commissioner, (Advertisements), had referred to "In accordance with the item No.3 of Resolution No.67, dt.28-12-2004…." and "…provisionally accorded permission based on the NOC vide F.No.80/N1/Sec'bad/2002, dt.13-12-2002 of the Chief Executive Officer, A.P. State Wakf Board, Hyderabad". When a Resolution is made and certain Conditions are specified, it is needless to say that the respondents 1 and 2 are bound by the said terms and conditions in pursuance of the Resolution which had been referred to supra. It is no doubt true that in an order of this nature, though elaborate reasons as such need not be spelt out by the concerned authorities, there should be application of mind in the event of the concerned authority exercising the power of reviewing, amending, revising or modifying any of the Conditions. The 2nd respondent, in the considered opinion of this Court, had not exercised such power of reviewing, amending, revising or modifying any of the Conditions with due application of mind in the facts and circumstances. In view of the same, this Court is of the considered opinion that the impugned action cannot be sustained and accordingly the same is hereby set aside. However, the matter is remitted to respondents 1 and 2 to reconsider the whole issue in the light of Condition No.33 or Condition No.40, as the case may be, and take a decision afresh in accordance with Law especially in the light of the correspondence between the Corporation and the A.P. State Wakf Board.

15. Accordingly, the Writ Petition is hereby allowed to the extent indicated above. At this stage, a request is made for early disposal of the matter by respondents 1 and 2. It is needless to say that the respondents 1 and 2 to put the writ petitioner and the 3rd respondent

on notice immediately and hear the parties and pass appropriate orders within a period of two weeks from the date of receipt of the order. No costs.

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Justice P.S. Narayana

Date : 26-10-2006

L.R. copy to be marked : YES / NO

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